

## **SETTLEMENT AGREEMENT**

### **1. INTRODUCTION**

#### **1.1 Parties**

This Settlement Agreement is entered into by and between the CENTER FOR ADVANCED PUBLIC AWARENESS, INC. (“CAPA”) on the one hand and MICHAELS STORES, INC and MICHAELS STORES PROCUREMENT COMPANY, INC. (collectively “MICHAELS”), with MICHAELS and CAPA each individually referred to as a “Party” and collectively as the “Parties.”

#### **1.2 Introduction and General Allegations.**

1.2.1 CAPA is a not-for profit corporation duly organized and existing in the State of California, which seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products.

1.2.2 CAPA alleges that MICHAELS employs ten or more persons, and CAPA alleges that MICHAELS is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2.3 CAPA alleges that MICHAELS imported, sold, and/or distributed for sale in California Covered Products, as defined below, that contain Di-(2-ethylhexyl) phthalate (“DEHP”), a chemical pursuant to Proposition 65 listed by the State of California to cause cancer and reproductive toxicity. CAPA further alleges that MICHAELS failed to provide the health hazard warning required by Proposition 65 for exposures to DEHP from the Covered Products.

#### **1.3 Product Description.**

The products covered by this Settlement Agreement are the Pink Glitter Lanyards, which was imported, sold and/or distributed for sale in California by MICHAELS with UPC No. 886946601033 (“Covered Products”).

#### **1.4 60 Day Notice of Violation and Exchange of Information.**

On November 20, 2018, CAPA served MICHAELS and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), related to the Covered Products, alleging that MICHAELS violated Proposition 65. The Notice alleged that MICHAELS had failed to warn its customers and consumers in California of the health hazards associated with exposures to DEHP from its import, sale and/or distribution of the Covered Products.

CAPA subsequently provided MICHAELS with test results in CAPA’s possession concerning its allegations. MICHAELS provided CAPA with sales data related to the Covered Products. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

#### **1.5 No Admission.**

The Parties enter into this Settlement Agreement to settle disputed claims between the Parties as set forth below concerning the Parties’ and the Covered Products’ compliance with Proposition 65. Specifically, CAPA alleges that MICHAELS imported, manufactured, sold or distributed for sale in the state of California, Covered Products which contained DEHP without first providing the clear and reasonable exposure warning required by Proposition 65. MICHAELS denies that such a warning is required under Proposition 65 or any otherwise applicable law.

MICHAELS further denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that it has imported, manufactured and/or sold and distributed in California, including the Covered Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by MICHAELS of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by MICHAELS of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by MICHAELS. This Section shall not, however, diminish or otherwise affect MICHAELS’ obligations, responsibilities, and duties under this Settlement Agreement.

**1.6 Effective Date.**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date the Agreement is fully executed by the Parties.

**2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

**2.1 Reformulation Standard.** Commencing on the Effective Date, and continuing thereafter, Covered Products that MICHAELS imports, manufactures, ships to be sold or offered for sale or purchase in or into California, or sells in California shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DEHP if the Products meet the standard of "Reformulated Products." "Reformulated Products" shall mean Covered Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each accessible component when analyzed pursuant to Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-CH-C1001-09.3 or equivalent methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a solid substance ("Reformulation Standard"). With respect to existing Covered Products, meaning those that are currently in its inventory, MICHAELS may continue to sell-through those items. However, as of the Effective Date, no new Covered Products may be added to MICHAELS' inventory that are not Reformulated Products or do not contain the warnings set forth in Paragraph 2.3

**2.2 Warning Option.** Covered Products that do not meet the Reformulation Standard set forth in Section 2.1 above and which are newly put into MICHAELS' inventory after the Effective Date shall be accompanied by a warning as described in Section 2.3 below. This warning shall only be required as to new Covered Products to the extent that they are sold or offered for sale to consumers in in the State of California. No Proposition 65 warning for DEHP shall be required as to any Covered Products that are already in the stream of commerce as of the Effective Date.

**2.3 Warning Language.** Commencing on the Effective Date, MICHAELS shall ensure that any new unreformulated Covered Products that it sells or offers for sale in California includes a clear and reasonable warning. The warning shall be affixed to the packaging or

labeling using one of the language formulations shown immediately below (except that words shown in brackets may be omitted at MICHAELS' option):

⚠ **WARNING:** This product can expose you to chemicals including Di-(2-ethylhexyl) phthalate, which is known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

OR

⚠ **[California Proposition 65] WARNING:** [Cancer and] Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The warning shall be prominently displayed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user is reasonably likely to understand the specific product to which the warning applies, so as to minimize the risk of consumer confusion. In the event that the Office of Environmental Health Hazard Assessment promulgates one or more regulations requiring or permitting warning text and/or methods of transmission different than those set forth above, MICHAELS shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Agreement

2.4 **Accessible Component.** The term “Accessible Component” shall mean any component of the Covered Product that is likely to be touched by an average consumer during reasonably foreseeable use.

### 3. **CIVIL PENALTY PURSUANT TO HEALTH & SAFETY CODE§ 25249.7(b)**

MICHAELS shall pay a civil penalty of \$500 to be apportioned in accordance with California Health & Safety Code §§25249.12(c) & (d), with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to CAPA. MICHAELS shall issue two separate checks for the penalty payment: (a) one check made payable to the Kawahito Law Group in Trust for the State of California's Office of Environmental Health Hazard Assessment (“in Trust for OEHHA”) in the amount of \$375, representing 75% of the initial civil penalty and (b) one check to “Kawahito Law Group in Trust for Center for Advanced Public Awareness, Inc.,” in the

amount of \$125, representing 25% of the initial civil penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486). The second 1099 shall be issued to Kawahito Law Group APC, who shall furnish a W-9 at least five calendar days before payment is due. Payment of the \$500 penalty as allocated in the manner set forth above shall be due within 10 days of the full execution of this Agreement and delivered to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
222 N. Pacific Coast Hwy. Suite 2222  
El Segundo, CA 90245

#### **4. REIMBURSEMENT OF FEES AND COSTS**

The Parties acknowledge that CAPA and its counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving any fee reimbursement issue to be resolved after the material terms of the agreement had been settled. The parties reached an accord on the compensation due to CAPA and its counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure (CCP) § 1021.5, for all work performed through the mutual execution of this agreement. More specifically, MICHAELS shall pay the total amount of \$16,500 for fees and costs incurred by CAPA as a result of investigating, bringing this matter to the attention of MICHAELS, and negotiating a settlement. MICHAELS shall make the check payable to “Kawahito Law Group APC.” Payment shall be made according to the following schedule. Payment of the \$16,500 shall be due within 10 days of the full execution of this Agreement and delivered to the following address:

James Kawahito, Esq.  
Kawahito Law Group APC  
222 N. Pacific Coast Hwy. Suite 2222  
El Segundo, CA 90245

To allow for the issuance of a timely payment to be rendered pursuant to the above, CAPA shall provide MICHAELS with a completed IRS Form W-9 for the Kawahito Law Group APC at least five calendar days prior to payment.

## **5. RELEASE OF ALL CLAIMS**

### **5.1 Full, Final and Binding Resolution of Proposition 65 Allegations.**

CAPA, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, releases MICHAELS, of any violation of Proposition 65 that was or could have been asserted by CAPA against MICHAELS, its subsidiaries and affiliated entities that are under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, licensors, each manufacturer or other entity supplying MICHAELS with the Covered Products, and each entity to which MICHAELS directly or indirectly distributes, ships or sells the Covered Products, including, but not limited to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively "Releasees") for any and all claims based on their alleged or actual failure to warn about alleged exposures to DEHP contained in the Covered Products that were allegedly manufactured, imported, distributed, sold and/or offered for sale by MICHAELS (either directly or through the Releasees) in California before the Effective Date. The Release shall also cover any Products that were in MICHAELS' inventory or the stream of commerce prior to the Effective Date. This release is provided in CAPA's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, CAPA on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, also hereby waives all of its rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims against MICHAELS and Releasees that it or they may have including, without limitation, all actions, and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigative fees, expert fees, and attorneys' fees for any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP and other phthalate chemicals in the Covered Products allegedly manufactured, sold, or distributed for sale before the Effective Date by MICHAELS or Releasees. This release is also provided in CAPA's individual capacity and is not a release on behalf of the public.

**5.2 MICHAELS' Release of CAPA.**

MICHAELS on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against CAPA, its attorneys and other representatives, for any and all actions taken or statements made by CAPA and its attorneys and other representatives up to the Effective Date, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Covered Products.

**5.3 Enforcement of Settlement Agreement.**

Any party may file suit before the Superior Court of the County of Los Angeles to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

**8. NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

|               |                       |
|---------------|-----------------------|
| For MICHAELS: | General Counsel       |
|               | Michaels Stores, Inc. |

8000 Bent Branch Drive  
Irving, TX 75063

with a copy to:

Robert L. Falk  
Morrison & Foerster LLP  
425 Market Street, 32<sup>nd</sup> Floor  
San Francisco, CA 94105

For CAPA:

James K. Kawahito  
Kawahito Law Group APC  
Attn. CAPA v. MICHAELS  
222 N. Pacific Coast Hwy., Suite 2222  
El Segundo, CA 90245

with a copy to:

Center for Advanced Public Awareness, Inc.  
2342 Shattuck Ave. #347  
Berkeley, CA 94704

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

## **9. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

## **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

CAPA and its attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

## **11. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.



## 12. AUTHORIZATION


The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

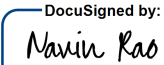
**AGREED TO:**

**AGREED TO:**

Date: \_\_\_\_\_

Date: 3/7/2019

By:  Digitally signed by  
Linda DeRose-Droubay  
Date: 2019.02.28 16:05:  
29 EST  
Center for Public Awareness, Inc.

By:  DocuSigned by:  
Navin Rao  
9B0BA90D64D74C2...  
Navin Rao  
VP-AGC & CCO  
Michaels Stores, Inc.